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MANDATORY ARREST: PAST ITS PRIME

Alexandra Pavlidakis*

I. INTRODUCTION

One in every four women will be abused by an intimate partner in her lifetime.¹ In 1989, the Bureau of Justice reported that partner abuse was the leading cause of injury to women in the United States² and resulted in thirty-one percent of all murders of women.³ Approximately 5.3 million women age eighteen and older are the victims of intimate partner violence⁴ in the United States each year.⁵ This

* Santa Clara University School of Law, J.D. candidate 2009; University of Colorado at Boulder, B.A. 2006. I would like to thank Julie Saffren for her advice and encouragement, as well as the members of the Santa Clara Law Review for all of the hard work and thoughtful comments they provided throughout the production process.

1. PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, at iii (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>. The author understands that men are victims of intimate partner violence and that batterers are not always male. However, for the sake of simplicity, this comment will use "batterer" synonymously with "male" and "victim" synonymously with "female," as approximately "three-fourths of the victims of family violence [are] female" and "about three-fourths of the persons who committed the family violence [are] male." MATTHEW R. DUROSE ET AL., U.S. DEP'T OF JUSTICE, FAMILY VIOLENCE STATISTICS 1, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs10.pdf>.

2. Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1849 (2002).

3. *Id.*

4. The term "intimate partner violence" refers to what has historically been called "domestic violence." National Institute of Justice, Intimate Partner Violence, <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/welcome.htm> (last visited Apr. 10, 2009). The phrase "intimate partner violence" encompasses a wider range of issues than does the term "domestic violence," and is defined as "physical, sexual, or psychological harm by a current or former intimate partner or spouse." *Id.*

5. NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 19 (2003), available at <http://www.cdc.gov/ncipc/>

violence is responsible for about two million injuries and 1300 deaths.⁶ Of these injuries, nearly 550,000 require medical attention and 145,000 are severe enough to require hospitalization for one or more nights.⁷ Each year in California, almost six percent of women suffer physical injuries as a result of intimate partner violence.⁸ Moreover, in 2007, 119 women in California were murdered by their intimate partners.⁹

Even though police intervention in intimate partner violence cases has increased radically over the past thirty years,¹⁰ intimate partner violence continues to be an epidemic. Intimate partner violence exists among all classes, races, sexual orientations, and cultural groups.¹¹ A woman has a twenty-five to thirty-three percent chance of being physically assaulted by a partner or former partner during her lifetime.¹² Intimate partner crimes are vastly different from other crimes because an intimate relationship exists between the victim and the batterer. In most intimate partner violence cases, physical abuse is merely one aspect of an intricate system of power and control that the batterer holds over the victim.¹³

pub-res/ipv_cost/IPVBook-Final-Feb18.pdf.

6. *Id.*

7. *Id.* Intimate partner violence also causes about 18.5 million mental health care visits per year. *Id.*

8. ALICIA BUGARIN & MARCUS NIETO, CALIFORNIA RESEARCH BUREAU, CALIFORNIA COUNTY APPROACHES TO DOMESTIC VIOLENCE 65 (2003), available at <http://library.ca.gov/crb/03/13/03-013.pdf>. California law enforcement received 174,649 intimate partner violence calls in 2007. Cal. Attorney Gen., Safe State: Focus Areas: Domestic Violence: Facts, <http://safestate.org/index.cfm?navid=42> (last visited Mar. 20, 2009) [hereinafter Safe State, Facts]. Of these calls, 69,422 involved weapons, such as firearms and knives. *Id.* Intimate partner violence arrests dropped from 52,392 in 2001 to 43,911 in 2006. *Id.* Further, in 2002, approximately twenty-two percent of murders were "family murders." DUROSE, *supra* note 1, at 1. Between 1998 and 2002, family violence was the cause of eleven percent of all reported and unreported violence. *Id.*

9. Safe State, Facts, *supra* note 8.

10. Mary Russell & Linda Light, *Police and Victim Perspectives on Empowerment of Domestic Violence Victims*, 9 POLICE Q. 375, 375 (2006).

11. See generally SHANNAN CATALANO, U.S. DEPT OF JUSTICE, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES (2007), <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipvus.pdf>.

12. See IACP NAT'L LAW ENFORCEMENT POLICY CTR., DOMESTIC VIOLENCE: CONCEPTS AND ISSUES PAPER 1 (2006), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=cRDBxr2WY6M%3d&tabid=372> [hereinafter IACP].

13. Results from the National Violence Against Women survey given in

Mandatory arrest laws remove a police officer's discretion when called to an incident of intimate partner violence.¹⁴ These laws require that an officer arrest suspected abusers when there is probable cause to believe that abuse has occurred.¹⁵ Before mandatory arrest statutes were passed, many police officers felt that intimate partner violence was a private family problem that did not require the assistance of law enforcement.¹⁶ Outraged, women's organizations strongly pushed for change.¹⁷ They argued that intimate partner violence should no longer be treated as a private problem and demanded that law enforcement treat it as a serious crime.¹⁸ These arguments resulted in many states passing mandatory arrest statutes.¹⁹

At the time of their enactment, mandatory arrest statutes were thought to be beneficial to society. Intimate partner violence was largely ignored socially and within the criminal justice system.²⁰ Mandatory arrest statutes brought much-needed attention to the problem of intimate partner violence. These laws indicated to the community that the state would now treat intimate partner violence as a crime with serious legal consequences.²¹ Mandatory arrest laws

2000 indicated that violence perpetrated against women by their intimate partners is often in conjunction with emotionally controlling and abusive behavior. See TJADEN & THOENNES, *supra* note 1, at iv. The survey found that women whose partners were controlling and verbally abusive were significantly more likely to report being raped, physically abused, and/or stalked by their partners. *Id.* This was true even when all other factors were controlled, such as sociodemographic and relationship characteristics. *Id.* The survey indicated that having a verbally abusive partner was the variable most likely to predict whether a woman would be physically abused by her intimate partner. *Id.* This supports the theory that physical violence perpetrated against women by their intimate partners is often a part of a systematic pattern of power and control. *Id.*

14. Vito Nicholas Ciraco, Note, *Fighting Domestic Violence with Mandatory Arrest, Are We Winning?: An Analysis in New Jersey*, 22 WOMEN'S RTS. L. REP. 169, 170 (2001).

15. *Id.*

16. Edna Erez, *Domestic Violence and the Criminal Justice System: An Overview*, ONLINE J. ISSUES NURSING, Jan. 31, 2002, <http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Volume72002/No1Jan2002/DomesticViolenceandCriminalJustice.aspx>.

17. *Id.*

18. *Id.*

19. See Ciraco, *supra* note 14, at 170.

20. See *id.*; Erez, *supra* note 16.

21. Machaela M. Hctor, *Domestic Violence as a Crime against the State*:

removed police discretion from the situation and held batterers legally accountable for their actions.

However, these statutes present significant disadvantages. While mandating the arrest of batterers was a step in the right direction, this mandate has proven to be more controversial than beneficial. Immediately after enacting these statutes, states saw a sharp increase in female arrests²² as police arrested victims who fought back against their abusers.²³ A further unintended consequence is that women who know their partner will be arrested if they call the police may choose to deal with the violence on their own, thus losing police help and protection; these are valuable tools that allow a woman to move toward a violence-free life.²⁴ Mandatory arrest also reinforces the view that a woman cannot make her own life decisions and that the state knows what is best for her.²⁵ By requiring the police to make an arrest, these laws imply that women lack the ability to appropriately respond to their abuse. A woman may choose not leave her batterer for a number of reasons. She may have a desire to keep her family intact, have a strong emotional attachment to her batterer, or be unable to leave for economic or financial reasons.²⁶ With the increase in police training and the improvements in coordinated community responses, states no longer need mandatory arrest statutes to help eliminate intimate partner violence.

Part II of this comment first discusses the history of intimate partner violence in the United States.²⁷ It then

The Need for Mandatory Arrest in California, 85 CAL. L. REV. 643, 659 (1997).

22. Valli Rajah et al., "Aren't I a Victim?": *Notes on Identity Challenges Relating to Police Action in a Mandatory Arrest Jurisdiction*, 12 VIOLENCE AGAINST WOMEN 897, 898 (2006); see Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 813 (2001).

23. Rajah et al., *supra* note 22 at 898; see Coker, *supra* note 22, at 813.

24. See generally Radha Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws* (Nat'l Bureau of Econ. Research, Working Paper No. 13186, 2007).

25. See Epstein, *supra* note 2, at 1867 ("By failing to honor a victim's individual preferences, mandatory policies patronize her and may undermine her effort to exert control over her life by disrupting her intimate relationship, economic security, and family stability."); Ciraco, *supra* note 14, at 177; Erez, *supra* note 16.

26. See Erez, *supra* note 16.

27. See *infra* Part II.A.

details the legal background of mandatory arrest statutes.²⁸ Part II concludes with a discussion of the advantages²⁹ and disadvantages³⁰ of mandatory arrest statutes. Part III highlights the current problems with mandatory arrest statutes.³¹ Next, part IV discusses in depth the reasons why mandatory arrest statutes should be repealed, including the questionable effectiveness of arrest,³² the fact that mandatory arrest has caused a sharp increase in female arrests,³³ and the potentially deadly chilling effect mandatory arrest has on victims of intimate partner violence.³⁴ Part IV further explains how police intervention and training have greatly increased over the past few decades,³⁵ along with public awareness about intimate partner violence.³⁶ Finally, part V of this comment proposes that states institute specialized intimate partner violence units to more efficiently address the problem of intimate partner abuse and implement a preferred arrest policy.³⁷ Addressing the problem of intimate partner violence requires a coordinated community response where law enforcement and victim advocacy resources work in concert to help intimate partner violence victims make the decision to live a violence-free life.

II. THE CREATION OF AND RATIONALE BEHIND MANDATING ARREST

A. *The History of Intimate Partner Violence*

In antiquated conceptions of the monogamous marital relationship, the woman's sole purpose was to satisfy her husband's needs, bear his children, and tend to his household.³⁸ Physical cruelty towards a wife, including murder, was accepted and even considered an appropriate

28. See *infra* Part II.B.

29. See *infra* Part II.C.1.

30. See *infra* Part II.C.2.

31. See *infra* Part III.

32. See *infra* Part IV.A.

33. See *infra* Part IV.B.

34. See *infra* Part IV.C.

35. See *infra* Part IV.D.

36. See *infra* Part IV.E.

37. See *infra* Part V.

38. Erez, *supra* note 16.

disciplinary measure.³⁹ The English common law, brought to the American colonies, gave husbands the right to verbally and physically chastise their wives, as long as they did not use a stick thicker than their thumb when doing so.⁴⁰ Mississippi's highest court reaffirmed this rule in 1824 in *Bradley v. State*,⁴¹ where the court held that a husband is "permitted to exercise the right of moderate chastisement" to discipline his wife.⁴² In 1862, courts acknowledged that the "law gives the husband . . . such a degree of force as is necessary to make the wife behave herself and know her place."⁴³ It was not until the end of the twentieth century that American law finally defined intimate partner violence as a crime.⁴⁴

B. *The Creation of Mandatory Arrest*

Mandatory arrest statutes remove a police officer's discretion when he or she is called to an intimate partner violence scene. These statutes require the officer to arrest suspected abusers where there is probable cause to believe that abuse occurred.⁴⁵ The officer is not required to witness the abuse or obtain a warrant prior to arrest.⁴⁶

Before the adoption of mandatory arrest policies, there were three common responses to intimate partner violence in the United States: non-intervention, mediation, or arrest.⁴⁷ Because of the prevailing view before the 1960s that intimate partner violence was a private matter to be dealt with in the home, non-intervention was the most common police response to an intimate partner violence call.⁴⁸ Most officers felt that there was no need for outside intervention in private family

39. *Id.*

40. *Id.*

41. *Bradley v. State*, 1 Miss. 156 (1824).

42. Ciraco, *supra* note 14, at 172; Erez, *supra* note 16.

43. Ciraco, *supra* note 14, at 172 (quoting *Joyner v. Joyner*, 59 N.C. (6 Jones Eq.) 322, 325 (1862)).

44. Erez, *supra* note 16. It was not until the 1970s that the police started to change their view that the criminal justice system would not intervene in cases involving intimate partner violence as long as the chastising of women did not result in serious injury. *Id.*

45. Ciraco, *supra* note 14, at 170.

46. *Id.*

47. Erez, *supra* note 16.

48. *Id.*

matters.⁴⁹ Many perceived intimate partner violence as less than criminal behavior and best handled by social workers.⁵⁰ Court decisions reinforced these views, holding that “family broils and dissensions” were not the business of the courts.⁵¹

During this period of non-intervention, the opinion that work on intimate partner violence cases was unrewarding and did not constitute “real” police work led police to ignore or delay responding to intimate partner violence calls.⁵² When police officers did respond to intimate partner violence calls, they rarely made arrests.⁵³ Often, when the police would arrive at an intimate partner violence call, the battered woman, who may have initially requested police assistance, would recant and ask the police not to arrest her abuser.⁵⁴ She may have called the police so the immediate violence would stop, but feared further retaliation from her batterer were he to be arrested and later released.⁵⁵ Because the police felt that intimate partner violence was a private family matter, they generally listened to the victim’s wishes and refrained from making an arrest.⁵⁶

Before mandatory arrest laws were enacted, there was also an erroneous perception that intimate partner violence calls were the most dangerous type of police work and that responding to incidents of intimate partner violence posed a heightened risk to the officer.⁵⁷ Moreover, some suggested that officers may have supported or even sympathized with the abusive male and thus did not feel inclined to arrest him.⁵⁸

In the 1960s, many social scientists and psychologists

49. *Id.*

50. Ciraco, *supra* note 14, at 170.

51. *Id.* at 172 (citing *Bradley v. State*, 1 Miss. 156, 158 (1824)).

52. Epstein, *supra* note 2, at 1851 (“[W]hen a woman would call 911 to report ‘my boyfriend is mad at me and is going to beat me up’ she was told ‘call us again when he does.’”); Erez, *supra* note 16.

53. Epstein, *supra* note 2, at 1852. It is estimated that officers only made arrests in three to fourteen percent of the intimate partner violence cases to which they actually responded. *Id.*

54. See David Hirschel & Ira A. Hutchison, *The Voices of Domestic Violence Victims: Predictors of Victim Preference for Arrest and the Relationship Between Preference for Arrest and Revictimization*, 49 CRIME DELINQUENCY 313, 316 (2003).

55. *Id.* at 316.

56. *Id.* at 314.

57. Ciraco, *supra* note 14, at 170; Erez, *supra* note 16.

58. Erez, *supra* note 16.

pushed for mediation and advising as an alternative to non-intervention.⁵⁹ This approach promoted several forms of crisis intervention, including separation of the parties, reconciliation, mediation, and referral to social service agencies.⁶⁰ However, both police and women's rights groups rejected this approach.⁶¹ Police officers felt they were not prepared to perform adequate crisis intervention and that mediation and counseling was social work, not the work of law enforcement.⁶² Women's groups argued that while mediation may stop immediate violence, it did not have positive long-term effects on batterer recidivism.⁶³ These groups argued that mediation and advising led to a further decrease in arrests, underplaying and ignoring the serious danger to victims of intimate partner violence.⁶⁴ They also contended that mediation was fundamentally flawed because it assumed equal bargaining power and equal culpability between the parties, reinforcing the view that the victim's behavior somehow caused the incident.⁶⁵

Several studies conducted in the 1960s and 1970s led to the push for mandatory arrest laws.⁶⁶ A 1962 study called *The Battered Child Syndrome* emphasized the need for doctors and social workers to intervene in situations involving intimate partner abuse on behalf of any children.⁶⁷ Two studies published in the late 1960s, *The Police Response to the Domestic Disturbance* and *Judicial Response to Intra-Family Violence*, called police response to intimate partner violence calls "perfunctory."⁶⁸ Further, in 1977, a report entitled

59. *Id.*

60. *Id.* Police officers were trained to mediate and "avoid arrest if possible." Epstein, *supra* note 2, at 1852. In fact, a 1970 report published by the National Institute of Law Enforcement and Criminal Justice recommended that police officers be trained to calm down intimate partner violence situations. *Id.* It suggested that the officers separate the parties, listen to the concerns of each disputant, and attempt to address the immediate problem underlying the current dispute. CHRISTOPHER D. MAXWELL ET AL., U.S. DEP'T OF JUSTICE, THE EFFECTS OF ARREST ON INTIMATE PARTNER VIOLENCE: NEW EVIDENCE FROM THE SPOUSE ASSAULT REPLICATION PROGRAM 1, 4 (2001).

61. Erez, *supra* note 16.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Ciraco, *supra* note 14, at 173-74.

67. *Id.* at 173.

68. *Id.*

Domestic Violence and the Police exposed the ineffectiveness of police in intimate partner violence calls, charging that it led to excessive rates of homicide.⁶⁹

These studies and the trend away from mediation set the stage for the 1984 Minneapolis Domestic Violence Experiment (the "MDVE"), conducted by Lawrence W. Sherman and Richard A. Berk.⁷⁰ The MDVE was an eighteen-month, controlled experiment in which researchers directed police officers randomly to apply one of three types of remedies to an intimate partner violence call: separation of the parties where the batterer was sent away for approximately eight hours, mediation and advising, or arrest.⁷¹ Using official police records of new offenses, interviews with victims, and several statistical tests, the researchers indicated that arresting the offender was by far the most effective deterrent as it reduced by more than half the risk of future assaults against the same victim during the six-month follow-up period.⁷²

In the same year, the 1984 *United States Attorney General's Task Force on Domestic Violence* (the "Task Force") stated that police departments must recognize family violence as a form of criminal activity.⁷³ Because the MDVE had gained prominent media attention, the Task Force, citing the MDVE, recommended police officers make arrest a priority in response to all intimate partner violence calls.⁷⁴

In 1986 and 1987, the National Institute of Justice sponsored the Spouse Assault Replication Projects ("SARP") to replicate the Minneapolis experiment in Omaha, Charlotte, Metro-Dade (Fla.), Colorado Springs, Milwaukee, and Atlanta.⁷⁵ These six studies produced conflicting results.⁷⁶ None of the cities demonstrated that arrests had the clear deterrent effect that the MDVE demonstrated.⁷⁷ The findings ranged from arrest having no effect to arrest having an

69. *Id.* at 173-74.

70. See Erez, *supra* note 16; see also MAXWELL ET AL., *supra* note 60, at 1.

71. Ciraco, *supra* note 14, at 174; Erez, *supra* note 16.

72. MAXWELL ET AL., *supra* note 60, at 3; Ciraco, *supra* note 14, at 174.

73. Ciraco, *supra* note 14, at 175.

74. *Id.*

75. MAXWELL ET AL., *supra* note 60, at 3.

76. *Id.* at 1; see Epstein, *supra* note 2, at 1868.

77. Hirschel & Hutchison, *supra* note 54, at 317; Ciraco, *supra* note 14, at 175.

escalating effect.⁷⁸ In fact, in three of the studies, batterers assigned to the arrest group showed higher levels of recidivism.⁷⁹ The other three studies showed only a “statistically significant but modest reduction” among batterers assigned to the arrest group.⁸⁰

Despite these contrary studies, there was a nationwide movement toward the implementation of mandatory arrest policies.⁸¹ Oregon was the first state to pass a mandatory arrest statute in 1977.⁸² The number of police departments with “preferred arrest” policies⁸³ increased four-fold between

78. Epstein, *supra* note 2, at 1868.

79. MAXWELL ET AL., *supra* note 60, at 1.

80. *Id.* One author of the original MDVE currently supports the repeal of mandatory arrest laws. Epstein, *supra* note 2, at 1868. He recommends that states repeal mandatory arrest laws and replace them with preferred arrest policies. See generally LAWRENCE W. SHERMAN ET AL., *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* (1992). He argues that arrest is not appropriate in all situations and may even be counterproductive for certain people. *Id.* He suggests that arrest be used only as one tactic that is available to police in dealing with intimate partner violence. *Id.* He further suggests that officers should be required to justify their decisions if they do not arrest in situations where probable cause does exist. *Id.*

81. David Hirschel & Ira W. Hutchison, *The Relative Effects of Offense, Offender, and Victim Variables on the Decision to Prosecute Domestic Violence Cases*, 7 VIOLENCE AGAINST WOMEN 46, 47 (2001). Also adding to the push for mandating arrest was the 1984 federal court decision in *Thurman v. City of Torrington*. See *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D.C. Conn. 1984). This case established an intimate partner violence victim's right to police protection from intimate partner violence. Iyengar, *supra* note 24, at 5. The City of Torrington, Connecticut was ordered to pay Tracy Thurman, a battered woman, \$2.9 million in damages because of the Torrington Police Department's failure to protect Ms. Thurman despite her repeated calls for help. Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 560 (1999). The police inaction resulted in Ms. Thurman's permanent paralysis. *Id.* The court found a violation of the Equal Protection clause of the Fourteenth Amendment because Ms. Thurman was able to prove that the Torrington Police Department treated violence by an intimate partner differently than crimes committed by strangers. *Id.* The court held that this was sexual discrimination violating the Fourteenth Amendment. *Id.* Twenty-four police officers and the Torrington Police Department were held accountable for their failure to intervene. *Id.* This case signaled that not only individual officers but police departments as well could be held accountable for a failure to protect battered women. Iyengar, *supra* note 24, at 5 n.2. It is argued that mandatory arrest laws were passed mainly to control police behavior in response to political pressures and exposure to liability. *Id.* at 7. In reality, reducing violence was a distant concern. *Id.* States were much more concerned with stopping immediate violence and avoiding liability for failing to protect battered women. *Id.*

82. Epstein, *supra* note 2, at 1854.

83. Preferred arrest statutes do not require police to make an arrest. See

the years 1984 and 1986.⁸⁴ By 1989, over three-fourths of jurisdictions around the country had changed their laws to allow for warrantless misdemeanor arrests in intimate partner violence cases.⁸⁵ As of 2004, twenty-two states and Washington D.C. had mandatory arrest policies.⁸⁶ As exhibited by the vast increase in states mandating arrest when officers are called to an intimate partner violence scene, intimate partner abuse is now considered a serious crime, not just a private family matter to be dealt with behind closed doors. However, while mandating arrest has many advantages, such as securing immediate protection for the victim, it also has grave disadvantages that strongly outweigh its benefits.

C. *The Advantages and Disadvantages of Mandatory Arrest*

1. *The Advantages of Mandatory Arrest Statutes*

Proponents of mandatory arrest argue that these laws help address the problem of police non-intervention by encouraging law enforcement to treat intimate partner violence as a serious crime.⁸⁷ The failure to arrest gives credence to the view that intimate partner violence is a private matter to be handled in the home.⁸⁸ By arresting batterers, the state shows that it is taking a firm stance against intimate partner abuse,⁸⁹ as arrest communicates to

Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 186 (2003). Instead, police are strongly encouraged to make an arrest when there is probable cause. *Id.*

84. See Ira W. Hutchinson & J. David Hirschel, *Limitations in the Pro-Arrest Response to Spouse Abuse*, 10 J. CONTEMP. CRIM. JUST. 147 (1994).

85. Erez, *supra* note 16. Throughout the 1990s the number of police departments with these policies continued to increase but at a much slower rate. Hirschel & Hutchison, *supra* note 81, at 47.

86. RESPECTING ACCURACY IN DOMESTIC ABUSE REPORTING (RADAR), JUSTICE DENIED: ARREST POLICIES FOR DOMESTIC VIOLENCE 5 (2006), available at <http://www.mediaradar.org/docs/RADARreport-Justice-Denied-DV-Arrest-Policies.pdf> (listing Alabama, Arkansas, Colorado, Connecticut, Iowa, Kansas, Louisiana, Maine, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, and Wisconsin as states with mandatory arrest policies).

87. Alisa Smith, *It's My Decision, Isn't It?: A Research Note on Battered Women's Perceptions of Mandatory Intervention Laws*, 6 VIOLENCE AGAINST WOMEN 1384, 1385 (2000).

88. See Coker, *supra* note 22, at 850–51.

89. See Laura Dugan et al., *Exposure Reduction or Retaliation? The Effects*

the batterer and to the community that intimate partner violence is a crime with serious legal consequences.⁹⁰

Mandatory arrest laws enhance batterer accountability by imposing a cost on abusers and showing the batterer that his actions constitute a crime punishable by law.⁹¹ First, proponents of mandatory arrest argue that the laws deter batterers from future violence.⁹² Research shows that men who are connected to their community by marriage, employment, or other reasons are more likely to stop the abuse for a longer term after arrest.⁹³ Second, with mandatory arrest policies in place, victims no longer have input into whether their abuser should be arrested and thus cannot be held responsible for the arrest.⁹⁴ It is the hope that relieving the victim of the decision to arrest further deters batterers from repeat violence and protects the victim from retaliation.⁹⁵ Third, arrest also secures a victim's immediate safety; a batterer in custody is unable to perpetrate acts of violence and intimidation.⁹⁶ Finally, the lack of choice inherent in mandatory arrest empowers victims because it allows a woman to denounce violence and assert her right to live a violence-free life.⁹⁷

2. *The Disadvantages of Mandatory Arrest Statutes*

Opponents of mandatory arrest statutes argue that mandating arrest institutes a paternalistic presumption that the state knows better than the victim what response is needed to stop the abuse.⁹⁸ "Mandating arrest robs the battered woman of an important opportunity to acknowledge and reject patterns of abuse and to partner with state actors

of Domestic Violence Resources on Intimate-Partner Homicide, 37 LAW & SOC'Y REV. 169, 178 (2003).

90. Hctor, *supra* note 21, at 659.

91. *Id.* at 660.

92. Smith, *supra* note 87, at 1385.

93. Barbara J. Hart, *Arrest: What's the Big Deal*, 3 WM. & MARY J. WOMEN & L. 207, 208 (1997). This may not be true for men who are not connected to their community. *Id.* To the contrary, arrest may have the opposite result and in fact increase batterer recidivism for men who are unemployed without strong community connections. See Mills, *supra* note 81, at 566.

94. Smith, *supra* note 87, at 1385.

95. *Id.*

96. See Hart, *supra* note 93, at 208.

97. Russell & Light, *supra* note 10, at 378.

98. See Ciraco, *supra* note 14, at 177.

(law enforcement officers, prosecutors, and medical professionals) in imagining the possibility of a life without violence."⁹⁹ While the ability to call the police and have a batterer arrested is a significant opportunity to reject abuse, arrest is seen as merely a temporary solution, ignoring the broader goal of empowering women with the opportunities and resources to live a violence-free life.¹⁰⁰ Mandating arrest ignores the woman's perspective completely and in doing so, becomes a form of abuse in itself.¹⁰¹ These "state interventions designed to eradicate the intimate abuse in battered women's lives all too often reproduce the emotional abuse of the battering relationship."¹⁰²

Opponents further argue that mandatory arrest policies patronize women. They undermine a woman's "efforts to exert control over her life by disrupting her intimate relationship, economic security, and family stability."¹⁰³ The police tend to be a woman's last resort; victims may resort to all known methods of self-help before they make the decision to call the police.¹⁰⁴ Often, victims want protection but do not want their partner arrested.¹⁰⁵ Many different reasons account for an intimate partner violence victim's decision not to call the police. First, a woman may be dependent upon her abuser for shelter, food, and income and his arrest may disrupt or threaten her livelihood.¹⁰⁶ Second, arrest re-victimizes the woman by switching the power from the abuser to the police.¹⁰⁷ Further, it reaffirms to the woman that she is unable to make her own decisions or take control over a situation that continually renders her helpless.¹⁰⁸ These

99. Mills, *supra* note 81, at 555.

100. See Hart, *supra* note 93, at 207.

101. Mills, *supra* note 81, at 554.

102. *Id.* at 554–55.

103. Epstein, *supra* note 2, at 1867.

104. Erez, *supra* note 16.

105. Radha Iyengar, *The Protection Battered Spouses Don't Need*, N.Y. TIMES, Aug. 7, 2007, at A19.

106. Sara Lassig & Kristen Schneider, *Reasons Against Domestic Violence Mandatory Arrest Policies*, CONSORTIUM CONNECTIONS, Summer 2005, at 5, available at <http://cyfc.umn.edu/publications/connection/pubs/05summer/connectionsummer05.pdf>.

107. See Mills, *supra* note 81, at 554–55; Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN'S L.J. 303, 315–16 (2005).

108. Mills, *supra* note 81, at 554–55.

reasons all may negatively impact whether an intimate partner violence victim decides to leave an abusive relationship.

Because of the inevitability of arrest when the police are called, many women simply have stopped calling the police altogether when an incident of intimate partner violence occurs.¹⁰⁹ Thus, an unintended and potentially deadly side effect of mandatory arrest laws is that the number of murders committed by intimate partners is now significantly higher in states with mandatory arrest policies than it is in states without them.¹¹⁰ Additionally, there has been a sharp increase in female arrests since the enactment of mandatory arrest laws.¹¹¹ This further victimizes women who have acted aggressively in defending themselves against the abuse. Moreover, when arrest is a singular intervention, its fleeting beneficial impact may not outweigh the violence that occurs when the abuser returns.¹¹² It may even place battered women and children at a higher risk for retribution than had the abuser never been arrested.¹¹³ The numerous and detrimental disadvantages of mandatory arrest make it such that arrest is not the most efficient response in all intimate partner violence situations.

III. MANDATORY ARREST LAWS: A HINDERANCE TO THE ELIMINATION OF INTIMATE PARTNER VIOLENCE

States took an aggressive stride toward the eradication of intimate partner violence with the enactment of mandatory arrest statutes. These laws brought much needed attention and action to the plight of victims of intimate partner abuse at a time when intimate partner violence was viewed as best handled privately. However, the negative effects of mandatory arrest now outweigh the reasons for which it was created. The effectiveness of arrest is not clear; it has resulted in a sharp increase in female arrests, and it has a potentially deadly chilling effect on a victim's inclination to

109. See Nash, *supra* note 107, at 315–16; Smith, *supra* note 87, at 1386.

110. See Iyengar, *supra* note 105.

111. See Rajah et al., *supra* note 22, at 898; see also Coker, *supra* note 22, at 813.

112. See Hart, *supra* note 93, at 207.

113. *Id.*

seek help.¹¹⁴

Furthermore, over the past few decades, police training and intervention in intimate partner violence incidents have improved drastically. Most law enforcement organizations have specific intimate partner violence protocols to follow and some have even implemented specialized intimate partner violence units.¹¹⁵ Many law enforcement organizations now tackle the problem of spousal abuse with coordinated community intervention.¹¹⁶ Beyond simply arresting the suspected abuser, the police provide the victim with resources¹¹⁷ to help her make the difficult decision to live a violence-free life.

Not only has law enforcement improved dramatically in its handling of intimate partner violence cases, but society as a whole has become more aware of intimate partner violence. Public awareness and policy responses to intimate partner violence have increased greatly. There are now many more shelters and hotlines available for battered women than there were a few decades ago.¹¹⁸ The next section will examine how, because of the negative, unintended consequences of mandatory arrest statutes and the increase in police training and public awareness of intimate partner violence, mandatory arrest laws are no longer a protective force but rather a hindrance to eradicating intimate partner violence.

IV. MANDATORY ARREST LAWS DO NOT SERVE THE PURPOSES FOR WHICH THEY WERE CREATED

A. *The Effectiveness of Arrest is Not Clear*

Arrest is not a panacea; alone, it is ineffective in stopping

114. See Smith, *supra* note 87, at 1386.

115. See Russell & Light, *supra* note 10, at 384.

116. See, e.g., Ellen L. Pence, *Some Thoughts on Philosophy*, in COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND 25 (Melanie F. Shepard & Ellen L. Pence eds., 1999).

117. Coker, *supra* note 22, at 845 (listing emergency housing, legal advocacy, support groups for battered women, and financial resources for battered women as resources that constitute a coordinated community response).

118. See Cal. Attorney Gen., Safe State: Focus Areas: Domestic Violence: Facts: Fighting Domestic Violence: The California Record: Highlights, <http://safestate.org/index.cfm?navid=221> (last visited Mar. 21, 2009) [hereinafter Safe State, Highlights].

the long-term progression of violence.¹¹⁹ The SARP replication studies, conducted to test the results of the MDVE, confirm this assertion.¹²⁰ These studies indicate that arrest is not the most effective deterrent for intimate partner violence¹²¹ because at best, arrest has only a modest and short-lived deterrent effect.¹²² Focusing on arrest as the sole remedy for intimate partner abuse detracts from the importance of changing community attitudes and helping further victim empowerment.¹²³

A 2001 National Institute of Justice study, comparing the number of repeat offenses when batterers are and are not arrested, showed that even without arrest, the majority of perpetrators discontinued their aggressive behavior after police intervention.¹²⁴ This suggests that policies mandating arrest "may unnecessarily take a community's resources away from identifying and responding to the worst offenders and victims most at risk."¹²⁵ The study also indicated that the deterrent effects of arrest appear modest "compared with the overall percentage of suspects desisting from intimate partner violence."¹²⁶

Because of the low probability of prosecution in intimate partner violence cases and the fact that an abuser is usually released from jail within a few hours following his arrest, arrest may only be a minor nuisance to the batterer.¹²⁷ Even further, the batterer may be more aggravated after he is released from custody than he was before the police arrived, which may increase the likelihood of further abuse. Arrests are not a proper response to intimate partner violence if

119. Erez, *supra* note 16.

120. See *infra* Part II.B.

121. See Ciraco, *supra* note 14, at 175; see also Erez, *supra* note 16.

122. See Epstein, *supra* note 2, at 1869. Although arrest may reduce repeat violence in the short term, there is no evidence that arrest has a long term deterrent effect. *Id.* In fact, arrest may increase recidivist violence in the long term. *Id.*; see also Mills, *supra* note 81, at 566.

123. See Erez, *supra* note 16.

124. MAXWELL ET AL., *supra* note 60, at 13.

125. *Id.*

126. *Id.*

127. See generally Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1860 ("Victim noncooperation, reluctance, or outright refusal to proceed are often cited as the major reasons for [the] lack of criminal prosecution."); Erez, *supra* note 16.

victims are punished with harsher abuse following a batterer's arrest.¹²⁸

If a man is arrested without being given the opportunity to explain himself, he is less likely to perceive the system as treating him fairly and with respect.¹²⁹ This in turn will decrease the likelihood that he takes responsibility for his actions and corrects his future behavior.¹³⁰ He may think that he was arrested unfairly and that the police or the victim is at fault.¹³¹ Without giving the batterer a chance to voice his version of the events, or explaining to him the results of his actions, arrest does not ensure that he take responsibility for the abuse and understand that his actions are unacceptable.¹³²

In addition, research suggests that the deterrent effect of arrest does not cut equally across race and class.¹³³ For men who are unemployed or live in "socially disorganized" neighborhoods, arrest may result in more incidents of violence than separation of the parties or other police action.¹³⁴ One study found that unemployed men who police arrested for intimate partner violence were more likely to commit repeat acts of violence than were unemployed men who police warned but did not arrest.¹³⁵ This indicates that arrest is not the right response in all situations.

Not only is arrest an insufficient deterrent for recidivism, but it also fails to induce women to leave their violent partners.¹³⁶ Victims of intimate partner violence are often dependent upon their batterer-partners and are thus unable to leave without strong community support.¹³⁷ While arrest may give the victim a few hours alone and protect her from immediate violence, arrest alone will not help a woman decide to leave a violent relationship.¹³⁸ Women stay in abusive relationships for a number of reasons. They may feel shame

128. Iyengar, *supra* note 24, at 17.

129. Epstein, *supra* note 2, at 1846.

130. *See id.*

131. *See id.*

132. *Id.*

133. Coker, *supra* note 22, at 812.

134. *Id.*

135. *Id.* at 856.

136. Iyengar, *supra* note 24, at 17-18.

137. *See* Coker, *supra* note 22, at 819, 836.

138. Iyengar, *supra* note 24, at 17-18.

or guilt, or believe that they brought this abuse upon themselves.¹³⁹ They may be unable to leave for economic or financial reasons, may have a desire to keep their families intact, may have a strong emotional attachment to their batterer, or may have a perceived or actual lack of options that may help them become self-sustaining.¹⁴⁰ Often, abusive men threaten women that if they leave, they will never truly escape or will be killed.¹⁴¹ Some men convince their partners that police officials will not believe them and that their children will be taken away from them.¹⁴² In fact, the most dangerous time for a victim of intimate partner violence is the moment that she physically leaves her abuser.¹⁴³

While it is clear that arrest may protect the victim from immediate abuse, it is not as clear whether arrest will protect the victim from further abuse. The conflicting studies on the effectiveness of arrest show that arrest alone is not the answer to the intricate problem of intimate partner violence.

B. Mandatory Arrest Has Resulted in Increased Female Arrests

Mandatory arrest statutes greatly increase the likelihood that police will arrest an intimate partner violence victim.¹⁴⁴ Since the adoption of mandatory arrest policies, the rate of female arrests has risen from a range of four to twelve percent to a much-higher fifteen to thirty percent.¹⁴⁵ Moreover, these laws resulted in a sharp increase in dual arrests, where police arrest both batterer and victim.¹⁴⁶ When these laws were passed, most police officers did not know how to determine whom to arrest once they arrived at an intimate partner violence call, as both parties may have

139. Erez, *supra* note 16.

140. *Id.*

141. *Id.*

142. See Coker, *supra* note 22, at 835; Erez, *supra* note 16.

143. Erez, *supra* note 16.

144. Coker, *supra* note 22, at 813.

145. Rajah et al., *supra* note 22, at 898.

146. *Id.* In California, "[s]ince 1988 more men (83.5 percent of total in 1998) have been arrested each year for intimate partner violence than were women, however, the percentage of women arrested increased from 6 percent of the total in 1988 to 16.5 percent in 1998." CRIMINAL JUSTICE STATISTICS CTR., CAL. DEPT OF JUSTICE, REPORT ON ARRESTS FOR DOMESTIC VIOLENCE IN CALIFORNIA, 1998, at 4 (1999), available at <http://ag.ca.gov/cjsc/publications/misc/dv98.pdf>.

had cuts and bruises.¹⁴⁷ Because law enforcement was compelled to hold *someone* responsible for the violence in a mandatory arrest jurisdiction, police arrested many women along with their batterers, even if the woman was not the aggressor but merely was defending herself.¹⁴⁸

In response to the sharp increase in victim arrests, women's groups demanded that the police create a policy in which officers only arrest the primary physical aggressor.¹⁴⁹ These "dominant aggressor" laws direct police officers to identify certain factors before they ultimately arrest one of the parties.¹⁵⁰ Some of the factors for which police are told to look are "threats creating fear of physical injury, the history of intimate partner violence between the persons involved, and whether either person acted in self-defense."¹⁵¹

While the dominant aggressor laws helped decrease victim arrests, they did not completely solve the problem. First, while the primary physical aggressor standard directs police to look for the primary aggressor of physical injuries, it does not account for the system of power and control under which most victims of intimate partner abuse live.¹⁵² Although a woman might have been the dominant physical aggressor in one particular situation, her behavior may be a reaction to years of severe emotional abuse. Second, police officers still tend to arrest both parties when they are unable to identify a dominant aggressor.¹⁵³

Further exacerbating the dilemma, a woman who is arrested loses the rights otherwise afforded to intimate

147. See Mills, *supra* note 81, at 588.

148. See Rajah et al., *supra* note 22, at 898.

149. See generally Mills, *supra* note 81, at 588–89 (discussing the problems arising from dual arrests and the impact of these policies on battered women).

150. See, e.g., N.Y. CRIM. PROC. LAW § 140.10 (McKinney 2004 & Supp. 2009). In New York, police officers are directed to identify the primary physical aggressor by evaluating the following four factors:

(i) the comparative extent of any injuries inflicted by and between the parties; (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member; (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and (iv) whether any such person acted defensively to protect himself or herself from injury.

Id.

151. CAL. PENAL CODE § 13701(b) (Deering 2008).

152. See Rajah et al., *supra* note 22, at 909; see also *supra* note 13 and accompanying text.

153. Mills, *supra* note 81, at 588.

partner violence victims.¹⁵⁴ For instance, the police will not transport her to a safe house and she will not be granted temporary housing in a battered women's shelter or be able to participate in job training programs.¹⁵⁵ She will also lose the protection of an automatically issued restraining order.¹⁵⁶ Moreover, once a battered woman has a negative interaction with the police, she will be less likely to call law enforcement for help in the future.¹⁵⁷ The reality is that "if a battered woman is given the choice between abuse by the batterer, which is familiar, and abuse by state actors, which is unfamiliar, she is likely to choose the abuse she knows best."¹⁵⁸

Additionally, arrest has serious consequences for immigrant women, as they may face deportation if convicted of an assault.¹⁵⁹ The U.S. Attorney General can waive deportation for a battered woman who can prove that she is not "the primary perpetrator of violence in the relationship" and that she was "acting in self-defense."¹⁶⁰ However, many women who act aggressively in response to violence may not meet the legal requirements for self-defense for a particular incident.¹⁶¹ Although the Violence Against Women Act of 1994¹⁶² and its subsequent amendments help a battered immigrant woman achieve lawful permanent resident status, thus allowing her to gain independence from her batterer for residency, the Act also requires that an immigrant woman be a person of "good moral character."¹⁶³ A woman with a criminal record may not be found a person of "good moral character."¹⁶⁴ The fear of deportation may seriously deter an immigrant woman from calling the police, thus possibly

154. Rajah et al., *supra* note 22, at 898.

155. *Id.*

156. *Id.*

157. Mills, *supra* note 81, at 595.

158. *Id.*

159. Coker, *supra* note 22, at 831; Iyengar, *supra* note 24, at 15.

160. Coker, *supra* note 22, at 831.

161. *Id.* at 831-32.

162. 8 U.S.C. § 1154(a) (2006).

163. See generally Sudha Shetty & Janice Kaguyutan, *Immigrant Victims of Domestic Violence: Cultural Challenges and Available Legal Protections*, NAT'L ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN, Feb. 2002, http://new.vawnet.org/category/Main_Doc.php?docid=384.

164. See *id.*; see also 8 U.S.C. § 1154(a).

placing her life in even greater danger.¹⁶⁵

Furthermore, mandatory arrest laws present special challenges to women with children. Women who are arrested face a potential loss of custody during the time in which they are arrested.¹⁶⁶ In many states, evidence of an arrest, even if the woman is not charged, is sufficient to prevent the woman from benefiting from child custody laws that disfavor a violent parent.¹⁶⁷ Some police departments require officers to inform child protective services of every intimate partner violence incident where a child is present.¹⁶⁸ At the same time, many child protection organizations have broadened the definition of child abuse to include situations in which a child resides in a home where intimate partner violence takes place.¹⁶⁹ As a result, some children are removed after a one-time incident, even if the child did not witness the violence.¹⁷⁰ Such a stringent standard does not take into account the dangers to a woman that may result from her decision to leave a violent relationship.¹⁷¹ Separation from a violent partner is the most dangerous time for a woman.¹⁷² The fact that child protection services require that a woman leave immediately after a single incident of violence may place the woman and her children at a greater risk.¹⁷³

The creation of mandatory arrest laws have resulted in a sharp increase in female arrests. These arrests have severely detrimental consequences for victims of intimate partner violence, including possible deportation and loss of child custody. While the creation of the dominant physical aggressor standard was an important step forward, it has not eliminated the problem of victim arrests. Arresting the victim has serious legal and emotional consequences and leaves women feeling that they cannot call the police for help, denying victims a crucial resource to help them live a life free of violence.

165. See Nash, *supra* note 107, at 315; Shetty & Kaguyutan, *supra* note 163.

166. Iyengar, *supra* note 24, at 15.

167. See Coker, *supra* note 22, at 832.

168. *Id.* at 833.

169. *Id.* at 833–34.

170. *Id.* at 834.

171. See *id.* at 835–36.

172. *Id.* at 835.

173. Coker, *supra* note 22, at 835–36.

C. *Mandatory Arrest Has a Chilling Effect on Victims*

A serious unintended consequence of mandatory arrest policies is the chilling effect that it has upon victims of intimate partner violence.¹⁷⁴ While some statistics appear to support the contention that mandatory arrest policies prevent further incidents of intimate partner violence, in reality, they may just show a greater hesitation on the part of abused women to report incidents to the police.¹⁷⁵ A woman in a violent relationship may want the immediate violence to stop, but yet not want her husband or partner arrested as she may depend upon him for food, shelter, and income.¹⁷⁶ Mandatory arrest policies signal to women in this situation that "calling the police to stop a particular episode of violence is no longer an appropriate avenue for assistance."¹⁷⁷ Calling the police is also not an attractive option for a woman who knows arrest will result and that her abuser may react with retaliatory violence.¹⁷⁸ Furthermore, mandatory arrest has a significant chilling effect on immigrant women.¹⁷⁹ They may fear that if

174. See generally Iyengar, *supra* note 24.

175. Barbara Fedders, *Lobbying For Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 291-92 (1997). For example, Connecticut passed a mandatory arrest statute in 1986. *Id.* at 291. The Hartford Police Department subsequently reported a twenty-eight percent drop in the number of calls for assistance in intimate partner violence incidents. *Id.* at 291-92. Yet this does not prove that mandatory arrest policies have a deterrent effect. *Id.* at 292. To the contrary, it may indicate that mandatory arrest laws have a chilling effect on battered women calling the police. *Id.*

176. See Lassig & Schneider, *supra* note 106, at 5.

177. Nash, *supra* note 107, at 315. In other words:

After an incident of domestic violence, for example, a woman might wish to call the police and have them come to her home. She might reason that a police officer could diffuse an explosive situation or frighten her batterer into ceasing his abuse. She may engage in a careful cost-benefit analysis and determine that, while police presence would be useful, an arrest would not. A woman may be dependent on the income of her batterer, for example, or she may not want their children to witness their father's arrest. Such a woman, if aware of a mandatory arrest policy in her jurisdiction, would likely refrain from calling the police at all, and would thereby be deprived of a potentially useful tool in her struggle to end the violence in her life.

Fedders, *supra* note 175, at 292.

178. Ciraco, *supra* note 14, at 177; Iyengar, *supra* note 24, at 14.

179. See Epstein, *supra* note 2, at 1867-68. Conversely, mandatory arrest may actually have a positive effect on immigrant women. See Erez, *supra* note 16. In fact, it is argued that mandating arrest is "crucial for assisting battered, immigrant women, who often do not know that woman battering is a crime, or

they call the police to stop immediate violence, they or their partners will face deportation if convicted with an intimate partner violence offense.¹⁸⁰ They may also fear being ostracized from their communities for exposing their husbands or partners to the risk of deportation.¹⁸¹

The chilling effect that mandatory arrest has on intimate partner violence victims may actually be fatal. The number of intimate partner violence incidents that result in murder is significantly higher in states with mandatory arrest than it is in states without such statutes.¹⁸² In general, intimate partner homicides have decreased over the past twenty years in conjunction with the greater public awareness of intimate partner violence.¹⁸³ However, in states with mandatory arrest laws, the homicide rate is about sixty percent higher than it is in states without these laws.¹⁸⁴ Research suggests that the increase of homicides in states with mandatory arrest policies is a direct result of the mandatory arrest laws themselves.¹⁸⁵ The looming “certainty of arrest deters victims from reporting abuse to the police, thus resulting in higher rates of intimate partner abuse.”¹⁸⁶

A woman’s failure to call the police when intimate partner violence occurs results in fewer police interventions, which in turn creates an increased probability of escalating violence.¹⁸⁷ This argument is supported by the National Institute of Justice, which stated that mandatory arrest policies “cut both ways” in that they either “decrease the abuse and risk of homicide, or they have the unintended consequence of increasing them.”¹⁸⁸ Although these laws are intended to impose costs on batterers, the social,

that help and services are available to battered women, regardless of their immigration status.” *Id.* Many immigrant women have received information about their legal rights only from their battering spouse. *Id.* Once the police are called and their batterer is arrested, these women may feel empowered. *See id.*

180. Epstein, *supra* note 2, at 1867–68.

181. *Id.* at 1868.

182. *See* Iyengar, *supra* note 105.

183. Laura Dugan et al., *Do Domestic Violence Services Save Lives?* NIJ J., Nov. 2003, at 21, 21.

184. *See* Iyengar, *supra* note 24, at 3.

185. *See id.*

186. *Id.*

187. *Id.* at 17.

188. Dugan et al., *supra* note 183, at 21.

psychological, and economic reasons why women stay in abusive relationships transfer the costs of arrest onto the victims.¹⁸⁹ Police training and interventions in intimate partner violence matters have greatly improved since the creation of mandatory arrest statutes. As such, it is imperative that battered women alert the police when they experience intimate partner abuse because the police can provide them with immediate safety and valuable resources that may save their lives.

D. Police Intervention and Training Has Drastically Improved

The emergence of mandatory arrest laws and mandatory intimate partner violence training programs has resulted in a positive change in law enforcement's perception of intimate partner violence work.¹⁹⁰ While there is still evidence to the contrary, police attitudes towards intimate partner violence are changing, as police are now much more willing to intervene in intimate partner violence situations.¹⁹¹ Police officers act as gatekeepers to the criminal justice system.¹⁹² They provide important social services designed to protect victims of intimate partner violence from abuse.¹⁹³ As such, "they significantly impact victim safety and service utilization."¹⁹⁴ For example, a victim may feel empowered by police intervention when her judgment is taken into account in making the arrest decision, thus spurring her to take control of her life and possibly leave an abusive relationship.¹⁹⁵ In a 1984 study, Lawrence Sherman and Richard Berk found that when batterers were arrested, victims were subsequently abused in twenty-six percent of

189. Iyengar, *supra* note 105.

190. See *id.*

191. See Ciraco, *supra* note 14, at 180.

192. Hart, *supra* note 93, at 211; Russell & Light, *supra* note 10, at 377.

193. See Erez, *supra* note 16.

194. Russell & Light, *supra* note 10, at 377. The police are usually not involved in intimate partner violence cases until the pattern of abuse is well established and the level of physical injury has become quite serious; a victim rarely calls the police after the first or second incident. IACP, *supra* note 12, at 1.

195. See Linda G. Mills, *Mandatory Arrest and Prosecution Policies for Domestic Violence: A Critical Literature Review and the Case for More Research to Test Victim Empowerment Approaches*, 25 CRIM. JUST. & BEHAV. 306, 313 (1998).

the cases.¹⁹⁶ However, when batterers were arrested and the victim felt that the police were concerned and willing to listen to her, the subsequent abuse dropped to nine percent.¹⁹⁷ Sherman and Berk hypothesized that this result was based upon the fact that victims felt empowered by their interaction with the police.¹⁹⁸

Many police organizations have drastically revised their intimate partner violence policies. For example, the International Association of Chiefs of Police National Law Enforcement Policy Center published a report on domestic violence in October 1996¹⁹⁹ designed to accompany its *Model Policy on Domestic Violence*.²⁰⁰ The report suggests appropriate police actions when responding to an intimate partner violence call and guidance on proper procedures in intimate partner violence cases.²⁰¹ The report emphasizes that it is important for officers to understand the “complex issues of violence in intimate relationships, including (1) the intent of the offender, (2) the meaning of the act towards the victim, and (3) the effect of the violence on the victim.”²⁰² It also recommends that “any comprehensive policy must be part of a developed, coordinated, community infrastructure that can provide support to maximize victim safety, implement sanctions against perpetrators, and offer rehabilitation opportunities for abusers.”²⁰³

With funding from the Federal Office of Community Oriented Policing, some law enforcement agencies have formed police-community partnerships, where officers partner with local intimate partner violence advocacy organizations, such as battered women’s shelters and safe houses, to better help a woman leave an abusive relationship.²⁰⁴ These

196. *Id.*

197. *Id.*

198. *Id.*

199. IACP, *supra* note 12, at 1. The report was subsequently revised in June 2006. *Id.*

200. *Id.*

201. *See id.* The report proposes procedures for how the police should initially respond to an intimate partner violence call, conduct on-scene investigations, and make decisions to arrest. *Id.*

202. *Id.* at 3.

203. *Id.* at 2.

204. Cal. Attorney Gen., Safe State: Focus Areas: Domestic Violence: Promising Practices, <http://safestate.org/index.cfm?navid=44> (last visited Mar. 21, 2009).

partnerships have improved victim safety and communication among intimate partner violence service agencies.²⁰⁵ Some proactive police responses include “giving detailed descriptions of available services, suggesting names of individuals to contact in service organizations, police themselves contacting victim services on behalf of victims, and offering transportation to shelters or safe houses.”²⁰⁶ Assisting battered women locate resources and services is extremely important in promoting victim empowerment and in reducing batterer recidivism.²⁰⁷ For example, battered women who met twice weekly with an advocate who helped them gain access to community resources reported significantly less abuse two years later.²⁰⁸ These services can improve a battered woman’s mental health, improve her perceptions of social support, and increase her physical safety.²⁰⁹ Advocates also play an important role because they can reverse a victim’s sense of social isolation.²¹⁰ This is vital in intimate partner violence situations in which the batterer has isolated the victim from most of her support system.²¹¹ As such, it is imperative that police couple with community organizations to help battered women realize the opportunities and resources available to them.

Many police departments have even created specialized intimate partner violence units, which focus solely on apprehending perpetrators of intimate partner abuse and assisting victims obtain valuable community resources.²¹² One study found that “virtually all victims served by these units express high levels of satisfaction, and the outcome in terms of conviction rates is double or even higher than comparable non-specialized units.”²¹³ As evidenced by the increase in specialized intimate partner violence units, the police no longer treat intimate partner violence as a private

205. *Id.*

206. Russell & Light, *supra* note 10, at 390.

207. Coker, *supra* note 22, at 820.

208. *Id.* at 819–20.

209. Epstein, *supra* note 2, at 1890.

210. *Id.* at 1889–91 (“[A]dvocacy services create similar benefits as do mandatory arrests: an increase in physical safety and the emotional space and empowerment necessary to engage in high-quality decision making.”).

211. *Id.* at 1890–91.

212. Russell & Light, *supra* note 10, at 384.

213. *Id.*

matter, but rather as a crime with serious legal consequences. Vast improvements in law enforcement organizations' intimate partner violence policies and improved police attitudes towards intimate partner violence work now negate the need for mandatory arrest laws.

E. Public Awareness of Intimate Partner Violence Has Greatly Increased

Since the 1970s, public awareness and policy responses to intimate partner violence have greatly improved.²¹⁴ When the battered women's movement started in the 1960s, there was no nationally recognized term for intimate partner abuse and there were "virtually no shelters or safe houses devoted to battered women, no civil laws had been enacted to deal with the emergency aftermath of an abusive incident, and the government had a long track record of ignoring the problem or even protecting perpetrators."²¹⁵ Before states enacted mandatory arrest laws, the criminal justice system, and in turn the public, generally ignored the plight of intimate partner violence victims. Through the efforts of women's groups, legislative action, and the media, the public is now far more aware of this type of violence and its devastating effects.²¹⁶

Community efforts to combat this insidious form of violence have improved rapidly. There has been a drastic increase in education and awareness campaigns, as well as in the number of battered women's shelters nationwide.²¹⁷ Additionally, health care organizations are teaching health professionals to recognize, diagnose, and treat intimate partner abuse as a health issue, and court personnel have been further educated to work together as a team in intimate partner violence cases.²¹⁸ Between the years 1976 and 1996, the number of intimate partner violence legal advocacy programs and hotlines grew considerably; legal advocacy resources for intimate partner violence victims overall increased nine-fold.²¹⁹

214. See Dugan et al., *supra* note 183, at 21.

215. Epstein, *supra* note 2, at 1845.

216. See Safe State, Highlights, *supra* note 118.

217. *Id.*

218. *Id.*

219. Dugan et al., *supra* note 183, at 21.

The increased public awareness of intimate partner violence prompted expansive changes from many state legislatures, including the California legislature. Indeed, California has been a leader in passing progressive legislative reform in this area.²²⁰ For example, in 1985, California began to require that law enforcement officers responding to intimate partner violence calls provide victims with written information about local shelters, community services, and criminal and civil legal options.²²¹ In 1994, California passed the Battered Women's Act.²²² This Act committed substantial state dollars to the California Department of Health Services for shelter services and to the California Department of Justice for intimate partner violence prosecutions.²²³ Additionally, since 1998, California has provided unemployment compensation for victims of intimate partner violence who are forced to leave work to protect themselves or their children.²²⁴ These significant improvements in public awareness and progressive state reactions toward intimate partner violence indicate that mandating arrest is no longer the most effective method to eliminate intimate partner abuse. What is needed instead is a system that focuses on victim empowerment and helping victims obtain the resources available to them to escape a life of violence.

220. See Safe State, Highlights, *supra* note 118.

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*; see also EMPLOYMENT DEV. DEP'T, STATE OF CAL., INFORMATION SHEET NO. 8323, SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE ABUSE (2008), available at http://www.edd.ca.gov/pdf_pub_ctr/de8323.pdf. Additionally, in 1995, California enacted a law requiring law enforcement officers below the rank of supervisor who normally respond to intimate partner violence calls to complete an updated course on intimate partner violence every two years. Safe State, Highlights, *supra* note 118. In 1997, California adopted the Family Violence Option as a part of welfare reform legislation to address the unique circumstances of victims of intimate partner abuse. *Id.* In 1999, California began a program granting survivors fleeing intimate partner violence a free post office box for mail forwarded by the Secretary of State. *Id.* Further, certain records that are normally public, such as voter registration information, will be confidential. *Id.*

V. MANDATORY ARREST SHOULD BE REPLACED BY THE
IMPLEMENTATION OF SPECIALIZED INTIMATE PARTNER
VIOLENCE UNITS AND PREFERRED ARREST POLICIES

A system that focuses on victim empowerment is crucial to make substantial gains in the elimination of intimate partner violence.²²⁵ Not placing the emphasis on helping victims understand the resources and opportunities available to assist them in living a violence-free life undermines the states' goal to eradicate intimate partner violence. A woman may choose to call the police because she does not know of any other options available to protect her. If the police solely arrest her batterer and do not inform her of her criminal and civil rights or of available resources, she may stay in the abusive relationship simply because she feels she has no other option. Moreover, many women are afraid of the negative repercussions of police involvement, such as the possibility of deportation or losing the family's sole stream of income upon the batterer's arrest. Women in abusive relationships should be motivated to use police assistance, not to fear it.²²⁶ Accordingly, this comment proposes that each jurisdiction create specialized intimate partner violence units and implement a preferred arrest policy.

Specialized law enforcement units focusing specifically on intimate partner violence are best able to achieve the goal of providing an integrated community response to victims.²²⁷ An integrated community response consists of providing emergency housing, legal advocacy, support groups, and financial resources for battered women, as well as other services.²²⁸ The more coordinated the response, the greater the likelihood that the victim will be safe and the greater the deterrent effect the interaction will have on the batterer.²²⁹ A

225. See Mills, *supra* note 81, at 577 ("The empowerment of the survivor is the most important goal. Empowerment provides a space for the battered woman to decide how to proceed in the healing process.").

226. *Id.* ("The survivor must be the author and arbiter of her own recovery. Others may offer advice, support, assistance, affection, and care, but not cure. Many benevolent and well intentioned attempts to assist the survivor founder because this fundamental principle of empowerment is not observed. No intervention that takes power away from the survivor can possibly foster her recovery, no matter how much it appears to be in her immediate best interest.").

227. Russell & Light, *supra* note 10, at 384.

228. Coker, *supra* note 22, at 845.

229. Russell & Light, *supra* note 10, at 377.

survey of intimate partner violence victims showed that victims felt they received the most effective police response when police services were broadly integrated with community resources.²³⁰ Additionally, police who understood their function as integrated with victim service agencies acknowledged the positive impact this had on victims with whom they had worked.²³¹

Police training is extremely important in promoting victim empowerment.²³² In specialized intimate partner violence units, officers are trained extensively in appropriate responses to victims of intimate partner abuse. In these units, officers are taught to understand why women stay in violent relationships, to identify the barriers to leaving, and to recognize how the police can provide the most effective assistance in particular situations.²³³ For example, specialized intimate partner violence units will be able to recognize chronically violent couples in the area and may be better able to organize a strategy tailored to each individual's needs.²³⁴ Specialized intimate partner violence units train the police in proper referral procedures and more importantly, educate them on the importance of developing relationships with social service agencies.²³⁵

Social service agencies are extremely beneficial to victims of intimate partner abuse because they may help increase the victim's physical safety and provide her with tools to "engage in high quality decision making."²³⁶ Furthermore, through the work of intimate partner violence advocates, victims learn that they are not alone. These advocates provide women with the resources necessary to make the complicated decision to leave the abusive relationship, such as emergency housing,

230. *Id.* at 382.

231. *Id.*

232. *See id.* at 392.

233. *See Mills, supra* note 81, at 598 ("The state can respond appropriately to a battered women only if its actors understand why she remains attached to the batterer and hence may be reluctant to involve the state in her affairs.").

234. *See id.* at 612-13 ("Instituting programs that strip law enforcement personnel . . . of their discretion is not an appropriate or effective response to domestic violence. Instead, we need to develop systems that respond to each battered woman on an individual basis and that help her determine what intervention strategy is best for her.").

235. *See Russell & Light, supra* note 10, at 392.

236. Epstein, *supra* note 2, at 1891.

support groups, and temporary financial aid.²³⁷ Additionally, social service agencies are invaluable to immigrant women who may not realize intimate partner violence is a crime.

These educated and specially trained intimate partner violence units should be granted broader discretion in deciding whether to make an arrest. Mandatory arrest laws should be replaced with preferred arrest statutes, which strongly encourage the police to make an arrest but do not require it.²³⁸ With preferred arrest policies, a police officer retains discretion not to arrest a suspected abuser when there are certain countervailing considerations advocating against arrest. For example, the preferred arrest policy would allow an officer to consider both the victim's expressed wishes and her analysis of what will keep her safe.²³⁹ Studies show that when a victim truly wants her abuser arrested, there is an increased likelihood that her batterer will both threaten to revictimize²⁴⁰ her and will in fact revictimize her.²⁴¹ On the other hand, when a woman does not want her batterer arrested, there is a decreased likelihood that he will revictimize her.²⁴² This strongly suggests that the woman's desire for the police to arrest her abuser be taken into account when the police determine whether to make an arrest.²⁴³

Furthermore, preferred arrest policies may have a positive effect on batterer recidivism.²⁴⁴ In a mandatory arrest jurisdiction, it may be difficult for an officer to convince a suspect that the officer is willing to listen and take the abuser's account of the events seriously because the law requires that the officer arrest the abuser, regardless of the present circumstances.²⁴⁵ In a preferred arrest jurisdiction,

237. Coker, *supra* note 22, at 845.

238. Han, *supra* note 83, at 186. As compared with mandatory arrest statutes that remove a police officer's discretion when he or she is called to an intimate partner violence scene by *requiring* the officer to arrest suspected abusers where there is probable cause to believe that abuse occurred, preferred arrest *encourages* the police to arrest when there is probable cause to believe that abuse has occurred. *Id.* at 186–87.

239. *See id.* at 186.

240. The term “revictimize” is used to refer to both physical and emotional abuse perpetrated by the batterer. *See supra* note 13 and accompanying text.

241. *See* Hirschel & Hutchison, *supra* note 54, at 331.

242. *Id.*

243. *Id.*

244. *See* Epstein, *supra* note 2, at 1887–88.

245. *Id.* at 1887.

the officer has the ability to actually listen to the suspect and take his version of the events into account when deciding whether to arrest the suspect.²⁴⁶ If a batterer feels that the police are treating him fairly, there is a greater likelihood that he will obey the police's orders and refrain from further violence.²⁴⁷

Preferred arrest policies allow a police officer to balance the factors before him or her with the strong presumption that arrest is the most appropriate response in an intimate partner violence case.²⁴⁸ The strong presumption of arrest demonstrates that the state takes intimate partner violence as seriously as it does stranger violence, but the discretion it affords to officers recognizes the unique circumstances that each intimate partner violence crime presents.²⁴⁹

California's preferred arrest statute can serve as a model. It states:

(a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed.²⁵⁰

Two important factors that these specialized intimate partner violence units should consider when utilizing their discretion to arrest, besides deciding which party is the "dominant aggressor,"²⁵¹ are the history of violence between the two parties and how much control the batterer has

246. *Id.* at 1887-88.

247. *Id.* at 1905 ("If a person feels fairly treated by state officials, he will perceive them as more legitimate, and, as a consequence, will be more likely to obey their orders. This is true regardless of whether he perceives an order to be right or wrong, and even if compliance is counter to his immediate self-interest.").

248. Han, *supra* note 83, at 186.

249. *Id.*

250. CAL. PENAL CODE § 13701 (Deering 2008).

251. See *supra* Part IV.B.

generally over the victim's life. It is extremely important for law enforcement to consider the history of violence between two partners because the most telling sign of future violence is past violence.²⁵²

It is also imperative for the officer to consider how much control the batterer has over the victim's life when deciding whether to arrest the batterer. Even if a victim has only minimal physical injuries, the victim may be trapped in an emotionally abusive relationship. Law enforcement must consider that intimate partner abuse is rarely a one-time incident. They need to also understand that the physical violence is almost certainly coupled with severe emotional abuse.²⁵³ Thus, the victim may not disclose to an officer the full extent of her injuries because she may feel that if her batterer discovered she had detailed his abuse to police, he would further abuse her—perhaps even more violently than before. An officer who understands that the victim may not be telling the whole story and knows to look for other signs of power and control the batterer has over the victim does the victim a great service and ultimately, may save her life.

Specialized intimate partner violence units, in which the officers focus on arresting perpetrators of intimate partner violence and assisting victims obtain invaluable resources, are essential to help women make the difficult decision to leave an abusive relationship. These specialized units can be specifically trained to understand the reasons why a victim of intimate partner abuse remains in a violent relationship. They can provide victims with knowledge and resources and point them to intimate partner violence advocacy organizations where victims learn their civil and criminal rights and have a safe place to stay. Further, these units can couple with local district attorneys who specialize in prosecuting intimate partner violence. Only when law enforcement, community advocacy organizations, and the criminal justice system work in concert, with the victim's best interests at heart, will intimate partner violence be eradicated.

252. IACP, *supra* note 12, at 5.

253. *See supra* note 13 and accompanying text.

VI. CONCLUSION

Intimate partner violence is a complicated issue; mandatory arrest statutes are simply a quick-fix to a much more complex problem. These statutes fail to consider the complexity of intimate partner violence. This comment does not suggest that officers abandon the use of arrest in intimate partner violence cases; only that arrest alone may not be the most effective response to eliminate intimate partner violence.

Mandatory arrest was a start in the right direction to eradicating intimate partner violence. It brought much-needed attention to difficulties that victims of intimate partner abuse face and helped the community understand that intimate partner violence is a serious crime. As evidenced by decreased recidivism rates, it also helped batterers realize that their actions were wrong and would result in serious legal consequences. Finally, it helped to show victims that they were not alone in their struggle against intimate partner violence.

The police have started taking intimate partner violence seriously, as shown by the drastic reform in most police organizations. Likewise, society has come to understand intimate partner violence as a serious crime. Resources available to victims have expanded radically. While arrest may still be the right response in many situations, it is not appropriate in all situations. For example, rather than helping a victim of intimate partner violence, mandatory arrest laws may further victimize her if the police arrest her merely because they are forced to arrest *someone*. Further, a woman may not want her partner arrested because she depends upon him for food and shelter. Because of these considerations, many women will simply not call the police. They will decide that they would rather accept the violence they know than risk arrest or face the daunting task of finding housing and an income once police arrest their partners.

A coordinated community response system in which specialized intimate partner violence units work closely with intimate partner violence advocacy groups and the court system is essential. A victim of intimate partner violence needs to make the decision to leave an abusive relationship herself; the state cannot do it for her. By providing victims

with the knowledge and opportunities available to assist them in making this decision, specialized intimate partner violence units may ultimately save women's lives. A woman will only be truly empowered to choose a life free from intimate partner abuse if she is aware of the extent of her rights as an intimate partner violence victim and the opportunities available to her when she leaves her partner.
